

2010 FEB -5 PM 3:19

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **MOTION TO PRECLUDE LATE  
DISCLOSED EVIDENCE,  
WITNESSES AND EXPERTS  
AND TO DISMISS THE DEATH  
PENALTY AS A SANCTION  
UNDER ARIZONA RULE OF  
CRIMINAL PROCEDURE 15.7**

) **(Oral Argument Requested)**

**MOTION**

Mr. DeMocker, by and through counsel, hereby respectfully requests that the Court preclude the State from offering late disclosed witnesses, experts and evidence at trial and that the Court dismiss the death penalty notice as a sanction for the State's

1 repeated and continuing violations of Rule 15.1 and this Court's prior orders. This  
2 motion is based on the due process clause, the Eighth Amendment and Arizona  
3 counterparts, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the  
4 following Memorandum of Points and Authorities.  
5

6 **MEMORANDUM OF POINTS AND AUTHORITIES**  
7

8 Rule 15.1 requires the State to make an initial disclosure at the time of  
9 arraignment or preliminary hearing. Thereafter, the State is required to disclose its  
10 witnesses, statements of the defendant, original and supplemental reports, experts and  
11 the results of expert examinations, list of documents, papers, etc. that the prosecutor  
12 intends to use at trial, a list of prior acts the State intends to use under Rule 404(b),  
13 mitigating or exculpatory materials, and other information 30 days after arraignment.  
14 Further disclosure requirements apply in a capital case, to be made by the State no later  
15 than 30 days after filing a notice to seek the death penalty.

16 **I. HISTORY OF THE STATE'S FAILURE TO COMPLY WITH RULE 15.1**  
17 **AND THIS COURT'S ORDERS REGARDING DISCLOSURE.**

18 Mr. DeMocker was arrested on October 23, 2008. On May 12, 2009 this Court  
19 issued a Minute Entry Order requiring the State to provide the defense with disclosure  
20 pursuant to Rule 15.1 by June 22, 2009. On June 3, 2009 the Court issued another  
21 Minute Entry Order clarifying that the State's disclosure was due on June 22, 2009.  
22 The Court cited *State v Newell (Milagro)*, 221 Ariz. 112, 210 P.3d 1283 (1 CA-SA 09-  
23 0052, Court of Appeals filed June 2, 2009). This was an extension of the deadlines  
24 provided for in Arizona Rule of Criminal Procedure 15.1 which set a disclosure date of  
25 thirty days after arraignment.<sup>1</sup> As the Court in *Newell* noted, Rule 15.1 "establishes the  
26

27 <sup>1</sup> Mr. DeMocker was last arraigned on an second indictment on February 10, 2009.  
28

1 minimum requirements for discovery.” *Id.* The State did not comply with this Court’s  
2 orders requiring disclosure.

3 When this deadline was ignored by the State, the defense requested that the Court  
4 set a date for disclosure for evidence to be relied on during the evidentiary hearing on  
5 the defense Motion to Dismiss the Death Notice for Lack of Probable Cause (*Chronis*  
6 hearing). At the defense’s request, the Court set the date for the State’s disclosure for  
7 the *Chronis* hearing for October 2, 2009. Yet again, the State ignored this Court’s  
8 Order.

9 Counsel has repeatedly raised the issue of the State’s failure to comply with Rule  
10 15.1 with both the State and the Court seeking to resolve the issues of late and ongoing  
11 disclosure.<sup>2</sup> Counsel raised these issues with the Court in the December 7, 2009 Motion  
12 in Limine to Preclude the Use of Evidence Disclosed in Violation of Arizona Rule of  
13 Criminal Procedure 15.1 and this Court’s Orders. That motion is incorporated by  
14 reference herein. The motion detailed how the State continued to disclose almost  
15 14,000 pages since the June 22, 2009 court ordered disclosure deadline. This late  
16 disclosure includes thousands of pages of bank documents and financial records taken  
17 from the victim’s home in July of 2008 but not disclosed until, in some cases, 15  
18 months after the seizure. The motion also explained that documents are produced by  
19 the State multiple times, often without Bates numbers. And for many documents there  
20 is no way to match the evidence item number with the Bates numbered documents that  
21 refer to that item.

22 On January 11, 2010 the defense, in a further attempt to receive evidence to  
23 which it is entitled to under Rule 15.1, filed a Motion to Compel the State to Respond.  
24 That motion detailed the numerous ignored letters of counsel seeking criminal histories  
25

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26 <sup>2</sup> The State also failed to timely notice its intent to seek the death penalty and list of aggravating factors pursuant to  
27 Rule 15.1. This Court has excused the State’s prior failures in its ruling denying Defendant’s Motion to Strike  
28 Death Notice based on its failure to timely file the notice and aggravating factors.

1 of witnesses, cell phone data and expert access, 15.1 compliance regarding experts,  
2 indexing systems information, identification of defendant's statements, reports  
3 regarding witnesses, DPS disclosure, Sorenson disclosure, and Yavapai County  
4 Sheriff's Office supplemental reports.  
5

6 **II. STATUS OF THE STATE'S FAILURE TO COMPLY WITH THE**  
7 **COURT'S ORDERS REGARDING DISCLOSURE.**

8 On January 22, 2010 the Court ordered the State to make the following disclosures  
9 to the defense by January 29: the criminal history of witnesses, compliance with Rule  
10 15.1 disclosure regarding experts, identifying what searching has been done on what  
11 databases, specific DPS disclosure, and information regarding further testing of the 14  
12 items. Although some of these items were provided in disclosure that was received  
13 from the State on February 1, 2010, the State has still not fully complied with several of  
14 this Court's orders.  
15

16 **A. DPS Disclosure**  
17

18 Although the defense has been requesting DPS protocols and audits in writing since  
19 August of 2009, these were not produced until February, 2010. The defense filed a  
20 motion to compel this information on October 6, 2009. DPS has produced literally  
21 hundreds of reports but has, until ordered by the Court to do so, failed to disclose these  
22 audits and protocols. Now with three months left before trial, the State has finally  
23 disclosed over 300 pages of DPS protocols and audit information. The defense  
24 requested this information early and often because it is essential to analyzing DPS  
25 reports and evaluating the results of DPS examinations. The failure of DPS and the  
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1 State provide this information until three months before trial has prejudiced Mr.  
2 DeMocker's ability to review this information and the ability of defense experts to  
3 properly consider it in advance of trial.  
4

5 Additionally, several DPS items that the Court ordered disclosed have still not been  
6 disclosed. The defense has been requesting DPS Corrective Action Logs since August  
7 of 2009. According to the DNA Advisory Board of Quality Assurance Standards for  
8 Forensic DNA Testing Laboratories, Standard 14, forensic DNA laboratories must  
9 "follow procedures for corrective action whenever proficiency testing discrepancies  
10 and/or casework errors are detected" and "shall maintain documentation for the  
11 corrective action." This Court ordered the State to disclose this information by January  
12 29, 2010. It has not been disclosed. Instead, the State disclosed an "Extraneous DNA  
13 Investigation Log." The Corrective Action Log and Extraneous DNA Investigation Log  
14 are two different documents. After months of defense requests and even in the face of  
15 the Court's order requiring disclosure, DPS and the State have failed to comply.  
16  
17

18 Secondly, the Court ordered the State to disclose the STR Frequency Tables relied  
19 on by DPS for reports dated June 1 and June 11, 2009. The State has refused to comply  
20 with this request claiming that this information is "part of the CODIS database and  
21 belongs to the FBI." These tables are relied on in reaching the conclusions drawn in the  
22 referenced reports and are critical to an independent examination of the results. Further,  
23 the STR Frequency Tables relied on by DPS in other testing has previously been  
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1 disclosed. (2935). Accordingly, there is no reason to believe that these documents  
2 which were previously provided suddenly now "belong to the FBI."

3  
4 The State's repeated failures to respond to defense requests and the Court's orders  
5 regarding DPS disclosure has prejudiced Mr. DeMocker's ability to review and analyze  
6 the hundreds of DPS reports, prepare defense experts and otherwise prepare for trial.  
7 The Court should prohibit DPS employees from testifying based on these repeated  
8 failures.  
9

#### 10 **B. Cell Phones**

11 The defense motion to compel noted that the State had been provided data regarding  
12 cell phone and tower information that was not yet disclosed to the defense. During a  
13 hearing on this motion, the State represented to the Court and counsel that all  
14 information in the State's possession had already been disclosed. In fact, the latest  
15 disclosure includes reports of a November, 2009 communication regarding cell tower  
16 information. This information was disclosed to the defense for the first time on  
17 February 1, 2010. (17781). This kind of information is critical to the defense  
18 investigation and preparation for trial as it relates to Mr. Knapp's location during the  
19 murder. The defense has been requesting this information for months with no response  
20 from the State.  
21  
22

23 The State was ordered to comply with the defense request to transfer cell phones to  
24 the defense expert. On Friday, January 29, the State gave three cell phones to Mr.  
25  
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1 Hammond in Court. The State did not inquire which cell phones were requested and  
2 provided no chain of custody for the items disclosed.

3  
4 **C. 15.1 Disclosure Regarding Experts**

5 The Court ordered the State to disclose lists of what documents were relied on by  
6 which experts in compliance with Rule 15.1. The State did not comply with this  
7 Court's order or Rule 15.1.

8  
9 *1. Mr. Echols*

10 In November, 2009, the Court ordered the State to disclose to the defense a list of  
11 what materials and documents Mr. Echols relied on "as soon as possible". In  
12 December, the State disclosed a list of document descriptions of what Mr. Echols relied  
13 on but did not provide the Bates numbers of those documents. On January 14, 2010, the  
14 Court ordered the State to provide either a list of Bates labeled documents or newly  
15 Bates labeled documents that were relied on by Mr. Echols "by the end of the week."

16  
17 On January 22, 2010, the Court again specifically ordered the items Mr. Echols  
18 relied on in reaching the conclusions in his report and testimony to be identified to the  
19 defense by January 29, 2010. The Court also noted that information not relied on in Mr.  
20 Echol's report or hearing testimony, but anticipated to be relied on for trial, could be  
21 disclosed no later than February 12. The Court noted that a list of documents was not a  
22 sufficient disclosure.  
23

24  
25 On January 22, 2010, the State provided 300 pages of previously produced  
26 documents with new Bates numbers. However the State also disclosed an additional list  
27

1 of documents relied on by Mr. Echols with no Bates numbers, including identifiers such  
2 as "emails obtained by DPS Computer Forensics Lab." The disclosure also noted that  
3 the Bates numbers for these documents would be provided in 30 days, in disregard of  
4 the Court's prior order. The labels, e.g. "emails obtained by DPS Computer Forensics  
5 Lab," are meaningless to the defense. The DPS Forensics Lab has several computers,  
6 flash drives, CDs and harddrives. The disclosures do not provide the defense with the  
7 notice required under Rule 15.1. On January 29, the State's "Response to Defendant's  
8 Discovery Requests" provided that the "information was provided in the State's 45<sup>th</sup>  
9 Supplemental Disclosure dated January 22, 2010." That disclosure included several  
10 pages listing document descriptions without Bates numbering or other detail sufficient  
11 for the defense to identify. The disclosure does not comply with what is now the  
12 Court's **third** order to properly disclose this information.  
13  
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15

16 The State should be prohibited from offering testimony of Mr. Echols. The State  
17 has produced literally thousands of pages of financial information to the defense and  
18 claims that it is using this information as proof of motive and in support of an  
19 aggravating circumstance. The State has presented unfounded, unsupported testimony  
20 of Mr. Echols in hearings before this Court, and a written report that was replete with  
21 hyperbole and unsupported allegations. Against this background, the State has refused  
22 to comply with Rule 15.1 or this Court's orders which required the disclosure initially  
23 by operation of Rule 15.1 in June, 2009 and then specifically by order of the Court in  
24 November, 2009. Now, with three months to trial the defense is literally left to identify  
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1 the proverbial needle in a haystack. The Court should preclude Mr. Echols from  
2 testifying.

3  
4 *2. Other Experts*

5 Similarly, the State has not provided Bates numbers or other sufficiently  
6 identifying information to be of any use to the defense in identifying materials that other  
7 experts relied on. For example, with respect to Ron Castle, a new, late-disclosed expert  
8 on "Computer/Personal Digital Assistant", the State lists "Blackberry information  
9 provided by UBS" as the information Mr. Castle relied upon. This is meaningless.  
10 With respect to another new, late-disclosed expert, Susan Kossler, the State lists "any  
11 and all contact between Defendant and Carol Kennedy including but not limited to  
12 email, text messages, and handwritten notes." Again, no Bates labels are provided and  
13 there is no way for the defense to know what documents are being relied on given the  
14 multiple harddrives, CDs and flashdrives disclosed. The purported Rule 15.1 disclosure  
15 for Kossler also includes the notation "Summary of Defendant's and Carol Kennedy's  
16 financial records, including but not limited to documents filed in P1300DO20070217,  
17 financial statements and income tax filing." This is another meaningless designation.  
18 These same descriptive language for Rule 15.1 disclosure purposes was made with  
19 respect to another just-disclosed expert, Dr. Steven Pitt.  
20  
21  
22

23 In yet another failure to comply with Rule 15.1, the State has not identified  
24 which experts will be supporting which aggravators and which documents will be  
25 offered in support of which aggravator. This is explicitly required by Rule 15.1(b) and  
26  
27  
28

1 (c). The State has never identified for any expert which aggravators that expert is  
2 supporting nor has the State identified which documents that each expert will be relying  
3 on in support of each aggravator.  
4

5 The State's repeated and continuing failure to comply with Rule 15.1 even in the  
6 face of explicit Court orders require a sanction. Mr. DeMocker, on trial for his life, has  
7 just three months to prepare for trial. With newly disclosed experts and no idea from  
8 the tens of thousands of pages of disclosure which experts will rely on what documents  
9 in support of what theory, the prejudice from the State's refusal and delay cannot be  
10 overstated. It has interfered with the defense team's ability to review the State's  
11 experts, prepare for their testimony or even interview them. It has also prevented Mr.  
12 DeMocker from identifying and retaining his own experts in preparation for trial. The  
13 Court should exclude the State's experts based on these violations of the Rules of  
14 Criminal Procedure and this Court's orders, not to mention the principles of due process  
15 and the Eighth Amendment.  
16  
17

#### 18 **D. Indexing Systems**

19 The Court ordered the State to identify in which DNA and fingerprint indexing  
20 systems the State had searched for unidentified biologic and latent print evidence by  
21 January 29. The defense motion to compel referred specifically to evidence items 603,  
22 800, 801, 804, 803, 852, 507 and any other swabs and/or extracts created from these  
23 evidence item numbers. This information was requested as early as December 2, 2009.  
24  
25

##### 26 *1. Fingerprints*

1       The State's response is "per Erin Daniels, DPS Criminologist, no unidentified  
2 latent prints have been discovered in this case." This is false. A DPS report at Bates  
3 number 334 indicates that "ridge detail of value was developed on item # 803" and was  
4 compared to Mr. DeMocker's print. This item is a light-bulb that was found unscrewed  
5 at the crime scene. Also, at Bates number 250, a DPS report signed by Erin Daniels, the  
6 person who is named in the State's response, indicated that the latent print was searched  
7 in AZAFIS on at least one occasion. Ridge detail of value was also developed on item  
8 852 (see Bates number 307); another report from Erin Daniels indicates that this item  
9 was searched at least once in AZAFIS in August 2008.

12       The State has again failed to comply with the State's request, now pending for  
13 over two months and the Court's Order. This is important exculpatory evidence. The  
14 State's failure to comply and provide this information has interfered with the defense  
15 preparation for trial and leads the defense to wonder what, if anything, DPS is doing to  
16 follow-up on the exculpatory evidence from the crime scene.

18       2. *DNA*

19  
20       Regarding the defense request about what indices the DNA evidence has been  
21 searched within, the State responds that searches are conducted on a weekly basis in  
22 SDIS and in CODIS. No documentation of these searches was disclosed. The defense  
23 specifically requested that the State provide documentation of the searches and results.  
24 Only one search of the State index done in August of 2008 has been documented, at  
25 Bates 2955-2956. Given the inaccuracies with respect to the latent print response and  
26

1 the importance of the exculpatory evidence, the State should be compelled to provide  
2 documentation of these searches regarding Item 603.

3  
4 **E. Defendant's Statements**

5 The State responded to Mr. DeMocker's Motion to Compel by asserting that it  
6 intended to rely on over 2700 jail calls at trial. The Court ordered the State to identify  
7 the calls it intends to rely on by date and number or some other identifying feature of  
8 the call along with the information from the call that the State proposed to use. The  
9 State has not complied. In its "Response to Defendant's Discovery Requests" the State  
10 directs the defense to "the State's 46<sup>th</sup> Supplemental Disclosure" with regard to the  
11 defendant's statements. Instead of providing the date and number of the proposed call  
12 or any other identifying information from among the over 2700 calls or other  
13 statements, the State lists the following: any and all statements the Defendant made to:  
14 Charlotte DeMocker, Katherine DeMocker, Jacob Janusek, Renee Girard, Barbara  
15 O'Non, John Farmer, Katherine Dean Warnett, Elizabeth Minard, Cynthia Woodring,  
16 Jennifer Rydezewski, Jackie Wheeler, Laura Spira and Anna Young. This does not  
17 comply with Rule 15.1 or the Court's order. Additionally, the State has only now  
18 disclosed over 1,000 pages of summaries of these jail calls which were created in 2008  
19 and 2009 (Bates 17805 and Disk 6163) but were not disclosed to the defense until  
20 February 2010.

21  
22 The State should be precluded from relying on any statements other than the  
23 statements it has identified as being made by Mr. DeMocker to law enforcement on July  
24  
25  
26  
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1 2-3, October 23 2008 and July 21, 2009.<sup>3</sup> These are the only statements that have been  
2 properly disclosed and all others should be precluded. The late disclosure of over 1,000  
3 pages of summaries of these calls which have been available to the State starting in  
4 2008 is an additional reason to preclude the State's reliance on this information. The  
5 cost and time involved to transcribe, review and the guess which of the transcripts the  
6 State will rely upon has been an impossible and unfair burden, particularly three months  
7 from a death penalty trial. The Court should prohibit the State from relying on any  
8 statements from jail calls at trial.  
9  
10

#### 11 **F. Forensic Testing**

12 At a hearing on December 9, 2009 the Court ordered the State to provide the  
13 defense with notice of what testing remained to be done with respect to 14 items of  
14 evidence. In January, the Defense received a report from DPS regarding these items.  
15 On January 22, 2010 the Court again ordered the State to provide the defense with  
16 notice of what additional testing was to be conducted on which items by January 29.  
17 The State did not comply with this Order. Instead, the State reported only that item 518  
18 and 505 will be "returned to the DPS Lab for additional testing, i.e. DNA and/or  
19 fingerprints." This response is completely meaningless and does not comply with either  
20 the spirit or the letter of the Court's prior rulings directing the State to disclose this  
21 information no later than January 29, 2010.  
22

### 23 **III. THE STATE'S CONTINUED AND REPEATED VIOLATIONS OF** 24 **RULE 15.1 AND THIS COURT'S ORDERS FOR TIMELY**

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25  
26 <sup>3</sup> The July 21, 2009 conversation was a "free talk" that the State may also be precluded from relying on for that  
27 reason. However, the defense does not contend that the State's reliance on this statement should be precluded  
28 based on any untimely disclosure by the State.

1                   **DISCLOSURE OF WITNESSES, EXPERTS AND EVIDENCE**  
2                   **SHOULD RESULT IN EXCLUSION.**

3                   In addition to its failure to comply with the requirements of Rule 15.1 and this  
4 Court's orders as outlined above, the State has engaged in a continued and consistent  
5 pattern of late disclosure to the defense. Counsel have been unable to meaningfully  
6 interview most of the State's witnesses and experts because disclosure is, even today,  
7 still incomplete and ongoing. The State has 141 people on its witness list in addition to  
8 25 experts, five of whom were only just disclosed three months before the trial date.  
9 Counsel have also been unable to identify, interview and retain the necessary defense  
10 experts given the State's continued adding of new "experts" and late disclosure of  
11 reports and other evidence. This conduct is sanctionable under Rule 15.7 and the Court  
12 should at last sanction the State for its continued violations of the Rules and this Court's  
13 orders.

14                  Rule 15.7 permits the Court to impose any sanction it finds appropriate where a  
15 party violates the disclosure required under Rule 15. *See* Ariz. R. Crim. P. 15.7(a). A  
16 trial court has broad discretion in fashioning a sanction and will not be found to have  
17 abused its discretion "unless no reasonable judge would have reached the same result  
18 under the circumstances." *See State v. Armstrong*, 208 Ariz. 345, 354, 93 P.3d 1061,  
19 1070 (2004) (citing *State v. Chapple*, 135 Ariz. 281, 297 n. 18, 660 P.2d 1208, 1224 n.  
20 18 (1983)). The trial court must take into account, in determining the appropriate  
21 sanction, "the significance of the information not timely disclosed, the impact of the  
22 sanction on the party and the victim, and the stage of the proceedings at which the  
23 disclosure is ultimately made." Ariz. R.Crim. P. 15.7(a). The Rule specifically  
24 contemplates exclusion use of evidence as a sanction. *Id.* (a)(1). The court "must order  
25 disclosure and impose sanctions unless it finds that the failure to disclose was harmless,  
26 or could not have been disclosed earlier even with due diligence and the information  
27  
28

1 was disclosed immediately upon discovery.” *See State v Newell (Milagro)*, 221 Ariz.  
2 112, 210 P.3d 1283 (1 CA-SA 09-0052, Court of Appeals filed June 2, 2009).  
3

4 **A. Late-Disclosed and Previously Removed Witnesses Should be Excluded**  
5 **by the Court**

6 On November 17, 2009 the Court ordered the State to cull down its witness list to  
7 identify who the State is likely to call and trial and who they are not likely to call. At  
8 that time there were over 230 witnesses identified on the State’s list. The Court ordered  
9 the State to complete this process by November 25, 2009 to facilitate defense  
10 interviews. The defense received a witness list with handwritten markings identifying  
11 approximately 132 witnesses that the State said it was likely to call and wanted to be  
12 present for any defense interviews, as well as 17 experts. (Attached). The other  
13 witnesses had the notation “N” handwritten by their names.

14 On January 29, 2010, with just three months left before trial, the State has  
15 added six witnesses that it previously indicated it would not be calling – including an  
16 out-of-state witness that counsel specifically decided not to attempt to interview based  
17 on the State’s prior representations when counsel was in the area where the witness  
18 lives. The State’s new witness list also adds twelve previously non-disclosed witnesses  
19 and identifies 5 previously non-disclosed experts.<sup>4</sup>

20 The State should be prohibited from calling the six witnesses that it previously  
21 represented it would not call. This includes Debbie Hill, Paula Matthew, Dr. Bill  
22 Rubin, Deane Shank, Marjorie Powell, and Brandon Stafford. Counsel relied on the  
23 State’s representations that it would not be calling these witnesses in planning and  
24

25  
26 <sup>4</sup> After in limine hearings which specifically addressed the issues of expert testimony, on January 22, the  
27 State identified two new “experts” in Detective Steve Page and Detective Theresa Kennedy. Counsel have filed a  
28 separate motion regarding preclusion of these two late disclosed, unqualified witnesses.

1 conducting out-of-state interviews and in approaching these witnesses. Furthermore, the  
2 State indicated that it would not be offering any evidence regarding alleged HGH use by  
3 Defendant, and there is no reason for the disclosure of Dr. Rubin if not for this purpose.  
4 With only three months to trial, the State should be prohibited from calling these  
5 witnesses.

6 With respect to the twelve witnesses never previously disclosed to the defense,  
7 the State should likewise be prohibited from calling these witnesses. These witnesses  
8 include six people identified as being from the "back country search team", a person  
9 from dharmamatch.com, Richard Ach, Brian Fagan of the FBI, Gareth Richards from  
10 Outdoor ProLink, and Mark Day and Jonathan Lantz from La Sportiva. The State  
11 should be prohibited from calling these witnesses.

12 With respect to the six people identified as the "back country search team", the  
13 State did not disclose any documentation regarding any such entity until this February  
14 disclosure. The report of this search from July 6, 2008 was also just disclosed in  
15 February. (17954). As the Court knows, the parties have already litigated the issue of  
16 the searches behind the Bridle Path property through testimony of multiple detectives at  
17 several hearings. The information about the back country search team was known to the  
18 State when the search was conducted in July of 2008 and yet it was not disclosed.  
19 Delay of 15 months and disclosure three months before a death penalty trial is  
20 inexcusable and these witnesses should be excluded.

21 Likewise, Richard Ach was contacted by the State on September 24, 2009 (see  
22 Bates 10613) and yet his identity as a witness was not disclosed until now. Again, there  
23 is no excuse for the State to fail to disclose information that was in its possession for  
24 months and then to disclose it three months before trial.

25 Brian Fagan of the FBI was initially contacted by the State in April of 2009  
26 (Bates 4918). Reports indicate that at that time the FBI data base regarding shoe prints  
27



1 was discussed. Disclosure about Mr. Fagan was not made to the defense until February  
2 1, 2010 and includes documents dating back to an October 2009 communication with  
3 Mr. Fagan and an FBI report regarding shoe prints that was not previously disclosed  
4 (Bates 17816). This information has been in the State's possession for months. During  
5 the months the State has had this information and failed to disclose it, the issues of the  
6 shoe print tracking and identification was actively litigated before this Court. The  
7 information was not disclosed to the defense even though there was motion in limine  
8 argument and testimony about the shoe print evidence. The State should not be  
9 permitted to introduce at trial this late disclosed information and experts. The holding  
10 back of this information and its eventual disclosure with only three months to trial  
11 severely prejudices Mr. DeMocker's ability to investigate, research and retain potential  
12 experts and prepare his defense.

13 The same is true with respect to newly disclosed witnesses Gareth Richards from  
14 Outdoor ProLink, and Mark Day and Jonathan Lantz from La Sportiva. These witnesses  
15 all came out of the State's undisclosed April – October 2009 contact with the FBI -  
16 information that the State previously had in its possession but failed to disclose. The  
17 State should not be permitted to call these witnesses at trial.

18 The State has failed to explain how its late disclosure is not harmful. Any  
19 suggestion to the contrary defies common sense. The defense is not able to review,  
20 evaluate and prepare a defense without full disclosure. Nor can the State reasonably  
21 dispute that it could have disclosed the evidence earlier with due diligence or, truthfully  
22 state that it was disclosed "immediately" upon discovery.

23 **B. Late Disclosed Experts Should be Excluded**

24 For the first time, three months before trial, the State has disclosed four new  
25 experts and a "rebuttal" expert. These experts should be excluded by this Court.

26 *1. Commander Mascher should be excluded*

The State has designated Commander Mascher from the Yavapai County Sheriff's Office as a "tracking expert." Commander Mascher was previously disclosed as a lay witness and the State did not identify Cmdr. Mascher in response to the defense motion in limine that officers be prohibited from testifying as experts. In fact, at that time the State represented that it did not intend to offer expert testimony from officers. The State has not disclosed any resume or other information regarding Cmdr. Mascher's training or expertise in "tracking" and should not be permitted, three months in advance of trial, to disclose a new expert. The issue of tracking shoe prints has been litigated at in limine hearings and the issue of undisclosed, unqualified officers was also litigated. The State should be precluded from eliciting "expert" testimony from Cmdr. Mascher. Counsel does not know if Cmdr. Mascher is so qualified because of the State's continued lack of any disclosure on the subject, but the defense preserves that objection pending subsequent late disclosure by the State. In any case, Cmdr. Mascher has been a known lay witness to the State since 2008 and yet never designated as an expert.

2. *Ron Castle should be excluded*

Ron Castle is another late disclosed expert. He is identified as an expert in “computer/Personal Digital Examiner.” The State has now disclosed *six* experts regarding computers. Mr. Castle should be precluded on that basis alone. Like most of the State’s other experts, there is no resume or other indication of Mr. Castle’s qualifications. The only disclosure about what Mr. Castle relied on, as required under Rule 15.1 and this Court’s orders is “Blackberry by UBS.” This is meaningless and prevents the defense from understanding or preparing for Mr. Castle’s interview or proposed testimony. Mr. Castle should be precluded on this basis. Furthermore, it hardly seems necessary for an expert to testify if the only basis for any opinion is as outlined above. The State should be prohibited from calling Mr. Castle as an expert.

### 3. *Eric Gilkerson should be excluded*

1 Eric Gilkerson is yet another newly late disclosed expert. He is identified as an  
2 "Examiner." While the State's newly disclosed report omits the dates of its multiple  
3 earlier contacts with Mr. Gilkerson, it is clear that this contact was on or near the  
4 September 2009 contact with FBI agent Fagan (the newly identified lay witness above).  
5 The State sent images to Mr. Gilkerson in or near September of 2009 but did not  
6 disclose that the images had been sent or which images were sent until its February  
7 2010 disclosure. Likewise the report from Mr. Gilkerson, dated October 22, 2009 was  
8 not disclosed until February 2010. The State has not disclosed any qualifications of Mr.  
9 Gilkerson. Testimony and in limine hearings on the issue of shoe prints was ongoing  
10 while the State possessed this evidence and did not disclose it. The State should be  
11 prohibited from offering Mr. Gilkerson as a witness.

12 *4. Susan Kossler should be excluded*

13 Susan Kossler is a fourth late disclosed expert. She is identified as a  
14 "Criminologist and Criminal Behavior Analyst." There is not a single piece of  
15 disclosure provided relating to Ms. Kossler. The list of documents Ms. Kossler relied  
16 on that is required under Rule 15.1 provides "any and all reports submitted by other  
17 experts" and "any and all contact between Defendant and Carol Kennedy." There are  
18 no reports or documentation of any contact between the State and Ms. Kossler. The  
19 defense, now three months before trial, has no idea what Ms. Kossler's qualifications  
20 are, what her proposed testimony relates to, what documents she relied on in reaching  
21 any conclusions, and what those conclusions might be. Furthermore, the Court  
22 excluded categories of information during the Rule 404(b) and in limine hearings that  
23 would presumably related to the proposed testimony of a "criminal behavior analyst" so  
24 her testimony is likely not permissible under the Court's rulings. With three months to  
25 trial this uncertainty is inexcusable. The State should be prohibited from calling Ms.  
26 Kossler as an expert under Rule 15.7.

1                   5. *Dr. Steven Pitt should be excluded*

2                   Finally, the State has disclosed Steven Pitt, a forensic psychiatrist, as a rebuttal  
3 expert "re: mitigation." The State has failed to identify what mitigation it expects  
4 Steven Pitt to rebut and has explicitly represented that it does not intend to offer any  
5 evidence on a variety of issues to which Pitt's testimony as a forensic psychiatrist would  
6 seemingly relate. The only disclosure provided by the State relating to Pitt is his C.V.  
7 There are no reports or documentation regarding any contact with Dr. Pitt. The  
8 purported Rule 15.1 disclosure relating to Dr. Pitt lists "any and all contact between  
9 Defendant and Carol Kennedy including but not limited to email, text messages, and  
10 handwritten notes," "any and all reports submitted by other experts," and a "summary of  
11 Defendant's and Carol Kennedy's financial records." This is meaningless to the  
12 defense. As noted above there are several computers, harddrives, flash drives and CDs  
13 that may contain communications. The State has not disclosed any "summary" of  
14 financial records that Dr. Pitt is supposedly relying on. The defense has no idea,  
15 particularly given the State's earlier representations during the in limine and 404(b)  
16 hearings, what it proposes that Dr. Pitt's testimony will relate to or rebut. The State  
17 should be prohibited from offering Dr. Pitt as an expert.

18                   **C. Late Disclosed Evidence Should Be Excluded.**

19                   The State's latest disclosure from February of 2010 includes evidence that has  
20 been in its possession for months, and in some cases, well over a year. For example,  
21 Bates 17343-17345 is a report from July of 2008. This report includes information  
22 about various searches of Mr. DeMocker, his residence and the surrounding area. The  
23 report was disclosed for the first time *a year and a half* after it was prepared. Bates  
24 17349 is DPS a chain of custody document from May of 2009. The disclosure also  
25 includes an interview of a Mr. Coffman from September of 2009. The police report of  
26 that interview was also just now disclosed. Other reports important information  
27  
28

1 including a September 2009 contact about Jim Knapp's alleged suicide and October  
2 2009 contact with the Kennedy family regarding depositions were just disclosed in  
3 February 2010. The February 2010 disclosure also includes a report from a November  
4 2009 contact regarding cell phone and tower information that the defense has been  
5 requesting (Bates 17781), a report regarding a contact at Callaway from July of 2009  
6 (Bates 17789), a report regarding contacts with expert Bill Kiviat from August of 2009  
7 (Bates 17790), a report relating to a search of a public restroom septic tank from July  
8 2008 (Bates 17954), and a report regarding the examination of cell phones that was  
9 complete in May of 2009. The disclosure also contains a report of a November 2008  
10 contact with Carol Tidmarsh (Bates 17778, and reports of jail calls from September of  
11 2009 (Bates 17791) as well as over 1000 pages of jail call summaries dating back to  
12 2008 and 2009 (CD 6163).

13 *1. Crime Scene Diagrams*

14 The defense has been requesting that the State provide any diagrams and  
15 measurements of the crime scene since at least March of 2009. The State has repeatedly  
16 assured the defense that it had disclosed all such diagrams and measurements. For the  
17 first time in the February 2010 disclosure the defense learned this was not true.  
18 Measurements of the crime scene taken on July of 2008 (Bates 17849), diagrams of the  
19 crime scene (Bates 17850-51) and CAD drawings of the scene (CD 6157) were just  
20 disclosed for the first time. Requests for this information have been made repeatedly,  
21 including after Detective Brown testified in November. The State has always responded  
22 that no other diagrams exist. This information was specifically requested to assist  
23 defense experts.

24 *2. Shoe Print Reports*

25 For the first time, three months before trial, the State has disclosed reports and  
26 photographs regarding shoe print analysis from the crime scene. These reports indicate  
27  
28

1 that the State was in contact with these witnesses before October 2009. (Bates 17800).  
2 The State also just disclosed an October 2009 FBI report on shoe prints. (Bates 17816).  
3 Emails between these witnesses and detectives are referred to in these just disclosed  
4 reports but the dates of the emails are not included and the emails have not been  
5 disclosed. This information relates to shoe prints that were located behind the Kennedy  
6 home and includes photos of the soles of shoes that the report claims may match the  
7 prints. This issue has been litigated in prior hearings while the State was in possession  
8 of this evidence and did not disclosure it. The State should not be permitted to  
9 introduce any evidence regarding this shoe print evidence. The State had this evidence  
10 for months, while these issues were being briefed and litigated, and yet the State did not  
11 disclose the information. The prejudice from this late disclosure is that Mr. DeMocker  
12 is left, three months before a trial in which he is fighting for his life, to review, analyze  
13 and process the information, as well as to potentially identify and retain defense experts  
14 while the State sat on this evidence for months. The Court should exclude this  
15 evidence.

### 16 3. *DPS Computer Forensic Reports*

17 Finally, the State has now disclosed three CDs of DPS computer forensic  
18 examinations of ipods, flash drives, harddrives, CDs and DVDs. The volume of this  
19 disclosure with three months to trial when the State has possessed these items for  
20 eighteen months is a violation of Mr. DeMocker's due process and fair trial rights. The  
21 defense has been requesting this information for months and the State has refused to  
22 provide it. The State has interfered with Mr. DeMocker's ability to review and analyze  
23 these reports, research and possibly retain the appropriate experts and otherwise prepare  
24 for trial. The State has had this evidence for well over a year and failed to timely  
25 examine and disclose reports of these items. By holding this evidence and these  
26 examinations the State has prejudiced Mr. DeMocker's ability to prepare his defense.  
27  
28

1  
2 **IV. THE COURT SHOULD DISMISS THE DEATH PENALTY BASED ON**  
3 **THE CUMULATIVE EFFECT OF THE STATE'S FAILURES TO**  
4 **COMPLY WITH ITS ORDERS AND RULE 15.1.**

5 Mr. DeMocker is on trial for his life. "[T]he penalty of death is qualitatively  
6 different from a sentence of imprisonment, however long. Death, in its finality, differs  
7 more from life imprisonment than a 100-year prison term differs from one of only a  
8 year or two." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). As a result, the  
9 United States Constitution requires that "extraordinary measures [be taken] to insure  
10 that the [Accused] is afforded process that will guarantee, as much as is humanly  
11 possible, that [a sentence of death not be] imposed out of whim, passion, prejudice, or  
12 mistake." *Caldwell v. Mississippi*, 472 U.S. 320, 352 n.2 (1985) (quoting *Eddings v.*  
13 *Oklahoma*, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring)). Indeed, "[t]ime and  
14 again the [Supreme] Court has condemned procedures in capital cases that might be  
15 completely acceptable in an ordinary case." *Caspari v. Bolden*, 510 U.S. 383, 393  
16 (1994) (quoting *Strickland v. Washington*, 466 U.S. 668, 704-705 (1984) (Brennan, J.,  
17 concurring in part and dissenting in part)). See also *Kyles v. Whitley*, 514 U.S. 419, 422  
18 (1995) (noting that the Court's "duty to search for constitutional error with painstaking  
19 care is never more exacting than it is in a capital case.") (quoting *Burger v. Kemp*, 483  
20 U.S. 776, 785 (1987)). This elevated level of due process applies both to the guilt and  
21 penalty phases of the case. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).

22 The cumulative effect of the State's repeated and continuing violation of the Court's  
23 orders and of Rule 15.1 has infected the fundamental fairness of this potential trial. The  
24 Court should strike the death penalty based on the State's repeated violations. Such a  
25 sanction will ameliorate to some extent the prejudice the State's actions have imposed  
26 on Mr. DeMocker and are a direct and meaningful response to the State's violation of  
27 the Rules enacted to protect the orderly disclosure of information in a death penalty  
28

1 case. Rule 15.7 accords the Court broad discretion to impose a sanction. Striking the  
2 death penalty as a sanction for repeated violations of the Rules of Criminal Procedure  
3 and Court orders is not a sanction that could possibly result in a finding of an abuse of  
4 discretion. The Court should strike the death penalty notice in this case.

5 **CONCLUSION**

6 Defendant Steven DeMocker, by and through counsel, hereby requests that this  
7 Court prohibit the State from offering testimony from the late disclosed witnesses or  
8 experts and from introducing late disclosed evidence and strike the death penalty notice  
9 filed by the State as a sanction.

10  
11 DATED this 5<sup>th</sup> day of February, 2010.

12  
13 By: 

14 John M. Sears  
15 P.O. Box 4080  
Prescott, Arizona 86302

16 OSBORN MALEDON, P.A.  
17 Larry A. Hammond  
18 Anne M. Chapman  
19 2929 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85012-2793

20 Attorneys for Defendant

21  
22 **ORIGINAL** of the foregoing filed  
23 this 5<sup>th</sup> day of February, 2010, with:

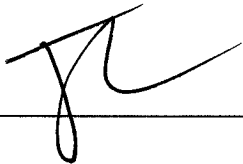
24 Jeanne Hicks  
25 Clerk of the Court  
26 Yavapai County Superior Court  
120 S. Cortez  
Prescott, AZ 86303



1  
2 **COPIES** of the foregoing hand delivered this  
3 this 5<sup>th</sup> day of February, 2010, to:

4 The Hon. Thomas B. Lindberg  
5 Judge of the Superior Court  
6 Division Six  
7 120 S. Cortez  
8 Prescott, AZ 86303

9 Joseph C. Butner, Esq.  
10 Prescott Courthouse basket  
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# HAWAIIAN COURT ATTORNEY'S OFFICE

OFFICE OF THE ATTORNEY GENERAL  
 1001 KALANOA DRIVE, SUITE 100  
 HONOLULU, HAWAII 96813  
 TEL: (808) 535-1234  
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STATE OF HAWAII

JOHN JONES

JOE BUTNER

1001 KALANOA DRIVE

1001 KALANOA DRIVE

1001 KALANOA DRIVE

1001 KALANOA DRIVE

THE HAWAIIAN COURT ATTORNEY'S OFFICE

STATE OF HAWAII

Here is the witness list  
 with notations as to "likely to  
 call" and state needs to be present  
 at interview

The information contained herein is for your use only and is not to be  
 distributed outside of your office. If you are unable to attend the interview,  
 please contact the attorney who provided this information. Thank you for your  
 cooperation. Happy Thanksgiving!

1001 KALANOA DRIVE, SUITE 100  
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$$\begin{aligned} & \text{Let } \mathbf{A} = \begin{pmatrix} 1 & 2 & 3 \\ 2 & 3 & 4 \\ 3 & 4 & 5 \end{pmatrix} \text{ and } \mathbf{B} = \begin{pmatrix} 2 & 3 & 4 \\ 3 & 4 & 5 \\ 4 & 5 & 6 \end{pmatrix}. \text{ Find } \mathbf{A} + \mathbf{B} \text{ and } \mathbf{A} - \mathbf{B}. \\ & \mathbf{A} + \mathbf{B} = \begin{pmatrix} 1+2 & 2+3 & 3+4 \\ 2+3 & 3+4 & 4+5 \\ 3+4 & 4+5 & 5+6 \end{pmatrix} = \begin{pmatrix} 3 & 5 & 7 \\ 5 & 7 & 9 \\ 7 & 9 & 11 \end{pmatrix} \\ & \mathbf{A} - \mathbf{B} = \begin{pmatrix} 1-2 & 2-3 & 3-4 \\ 2-3 & 3-4 & 4-5 \\ 3-4 & 4-5 & 5-6 \end{pmatrix} = \begin{pmatrix} -1 & -1 & -1 \\ -1 & -1 & -1 \\ -1 & -1 & -1 \end{pmatrix} \end{aligned}$$

*(continued)*

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$$= \frac{1}{2\pi} \int_0^{2\pi} \left( \frac{\partial u}{\partial r} + i \frac{\partial v}{\partial r} \right) e^{-i\theta} d\theta = \frac{1}{2\pi} \int_0^{2\pi} \left( \frac{\partial u}{\partial r} + i \frac{\partial v}{\partial r} \right) e^{-i\theta} d\theta$$
[illegible]

[illegible][illegible]

1. The first part of the document is a list of names and dates, which appears to be a roster or a list of participants. The names are written in a cursive script, and the dates are written in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right. The names are: John A. Smith, John B. Smith, John C. Smith, John D. Smith, John E. Smith, John F. Smith, John G. Smith, John H. Smith, John I. Smith, John J. Smith, John K. Smith, John L. Smith, John M. Smith, John N. Smith, John O. Smith, John P. Smith, John Q. Smith, John R. Smith, John S. Smith, John T. Smith, John U. Smith, John V. Smith, John W. Smith, John X. Smith, John Y. Smith, John Z. Smith. The dates are: 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 252

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THE  
CITY OF  
NEW YORK  
COUNTY OF NEW YORK

In SENATE,  
January 10, 1967.

REPORT  
OF THE  
COMMISSIONER OF  
CORRECTIONS

FOR THE YEAR  
ENDING DECEMBER 31, 1966

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Office of the Yavapai County Attorney

2001 January 10, 2:00 PM

Present: Mr. Sheriff

John (JRS) / 10:00 AM / 10:00 AM / 10:00 AM

1	(104)	N	D. B. Rubin	Personal Knowledge
2	(105)	N	John Wagner	Personal Knowledge
3	(106)	N	John Serrin	Personal Knowledge
4	(107)	N	Laura Nerva	Personal Knowledge
5	(108)	N	Bar S. S. S.	Personal Knowledge
6	(109)	N	Linda Smith	Personal Knowledge
7	(110)	N	James S. S.	Personal Knowledge
8	(111)	N	Brandon Stafford	Personal Knowledge
9	(112)	N	Judy Smith	Personal Knowledge
10	(113)	N	Steven Teagarden	Personal Knowledge
11	(114)	N	Joe Temple	Personal Knowledge
12	(115)	N	John Thomas	Personal Knowledge
13	(116)	N	Mary Thomas	Personal Knowledge
14	(117)	N	Wanda Thomas	Personal Knowledge
15	(118)	N	Carol Thomas	Personal Knowledge
16	(119)	N	Brice Thomas	Personal Knowledge
17	(120)	N	Pat Walsh	Personal Knowledge
18	(121)	N	Joe Warner	Personal Knowledge
19	(122)	N	Uzro. Warnock	Personal Knowledge
20	(123)	N	John Waters	Personal Knowledge
21	(124)	N	Peggy Wan	Personal Knowledge
22	(125)	N	Jeff Williams	Personal Knowledge
23	(126)	N	Michael Winberg	Personal Knowledge
24	(127)	N	Don Wood	Personal Knowledge
25	(128)	N	Brian Wynn	Personal Knowledge
26	(129)	N	Christian Yon	Personal Knowledge
27	(130)	N	Jeff Zwick	Personal Knowledge
28	(131)	N	Steve Zwick	Personal Knowledge
29	(132)	N	Joe Coffman	Personal Knowledge
30	(133)	N	Sheryl Baker	Personal Knowledge
31	(134)	N	Lee Chert	Personal Knowledge
32	(135)	N	Deane Shiao	Personal Knowledge
33	(136)	N	Larry Risher	Personal Knowledge
34	(137)	N	James Van Statten	Personal Knowledge

Present: Sheriff  
Bank of America

UBS

All statements of the defendant and of any person who will be tried with defendant.

See Yavapai County Sheriff's Office DR 03-029126 (\*\*).

See Yavapai County Attorney's Office DR 03-029129 (\*\*).

The names and addresses of experts who will have personally examined the defendant or any evidence in this case together with the results of physical examination and scientific tests, experiments or demonstrations, including all written reports or statements made in connection with this case.

Dr. Philip Keene

Yavapai County Medical Examiner - Autopsy Report

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Northern Arizona Crime Lab  
Central Regional Crime Lab  
AZ DPS Computer Forensic Unit  
Sorenson Forensics  
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Prescott Valley, AZ  
AZ DPS Computer Forensic Unit

Reconstruction Reports  
DNA Services  
Latent Prints  
DNA  
Tire Tracks  
Electronics/Computer Forensics  
DNA  
Hair Examination  
Financial Forensics  
Financials  
DNA

(l) Paul Lindvey  
(m) Randy Arthur

Computer Forensics

A list of all papers, documents, photographs or tangible objects which are produced in and used at trial or which were obtained from or purportedly belong to the defendant.

The following scanned documents were provided on 1 CD:

Description of Item	Bates Stamp No.
Sherman Return UBS dated 10-15-09-10-19-09	
PSA - Check	14434-14434
Payroll Check	14435-14442
Deposited Checks	14443-14451
Bankers Reconciliation Report - 10/14/09 - Present, Excel	14452-14477
Payroll Print	14478-14479
Wires	14480-14483
Statement for UBS Equity Plan	14484-14488
Personnel Files - Personnel File 1	14489-14514
Personnel Files - Personnel File 2	14515-14530
Rolling 5 - Agreements	1-550